

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

6

Decision

TOPIC

Notice of Intended Action – Water Use & Allocation Permit Fees, Chapter 50: Scope of Division—Definitions—Forms—Rules of Practice; and Chapter 55: Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water

The Commission is asked to approve this Notice of Intended Action to initiate rulemaking to amend the Iowa Administrative Code: Chapter 50: Scope of Division – Definitions – Forms – Rules of Practice and Chapter 55: Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water. The changes being proposed would revise the fee schedule for water use permits and aquifer storage and recovery well permits.

Water use permits are required of any person or entity using 25,000 gallons of water in a single day during the year, and are issued for a period of up to 10 years. Appropriations from the General Fund have been used to fund the issuance of the water use permits and related costs at approximately \$292,600 for SFY 2009.

During the last legislative session, the legislature authorized the department to collect up to an additional \$500,000 in fees. The General Fund appropriations do not cover the cost of the program as envisioned in the late 1960's, nor do they cover the funding for the additional requirements placed on the department for this program during the ensuing years, which include the priority water allocation implementation during droughts, implementation of water conservation practices, and well interference compensation resolution. Many permit decisions must be made with inadequate available hydrogeological data. Well-interference cases often require that the department meet with appropriate individuals to assess hydrogeologic, engineering, and environmental impacts of contested water allocation cases. Historically, there has been insufficient funding to meet these needs.

Each year, the Environmental Protection Commission will be asked to set the fee based on the budgeted expenses for that year minus the amount of any unused funds from the previous year and the general fund appropriations that are assumed to remain at approximately \$292,600. A more detailed explanation of the current and future program efforts can be obtained from the department's website at <http://www.iowadnr.com/water/quantity.html>.

Stakeholders participating in the development of the *Iowa Water Resource Management Strategy* have also been involved in the development of this rulemaking. The department plans to mail notices about the proposed fee rule to the current water use permittees (approximately 3,500) and

to hold three public hearings to obtain additional public comment.

Charles C. Corell
Chief, Water Quality Bureau
Environmental Services Division
September 17, 2008

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.260 through 455B.274, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Iowa Administrative Code 567-Chapter 50, "Scope of Division—Definitions—Forms—Rules of Practice" and Chapter 55, "Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water."

The purpose of this rulemaking is to include the fee schedule for the water use permit program into the Iowa Administrative Code. The previous water use permit fee schedule was rescinded in August 2008. Iowa Code 455B.105(11) allows the Environmental Protection Commission to adopt by rule a schedule of fees for permit applications as well as a schedule of fees which will be assessed for the management of Iowa's water use permitting program. In determining the fee schedules, the commission shall consider the cost of administration of permits, review of applications and compliance with the terms of the permits, and the relative benefits to the applicant and to the public of permit review, issuance, and monitoring compliance.

By statute, water use permits are issued for up to 10 years. Appropriations from the General Fund have been used to fund issuance of the water use permits and related costs at approximately \$292,600 for SFY 2009.

The General Fund appropriations do not cover the cost of the program as envisioned in the late 1960's, nor do they cover the funding for the additional requirements placed on the department for this program during the ensuing years such as: priority water allocation implementation during droughts, implementation of water conservation practices, and well interference compensation resolution. Many permit decisions must be made with inadequate available hydrogeological data. Well-interference cases often require that the department meet with appropriate individuals to assess hydrogeologic, engineering, and environmental impacts of contested water allocation cases. Historically, there has been insufficient funding to meet these needs.

During the last legislative session, the legislature established a dedicated fund and authorized the department to collect up to \$500,000 in permit fees to implement this program. Each year, the Environmental Protection Commission will be asked to set the fee based on the budgeted expenses for that year minus the amount of any unused funds from the previous year and general fund appropriations that are assumed to remain at approximately \$292,600. The permit fee rule for the aquifer storage and recovery well permitting program will be revised and moved to Chapter 50 from Chapter 55.

Any interested person may file written comments on the proposed amendments on or before Friday, December 12, 2008. Written comments or questions regarding the proposed action should be directed to Diane Moles, Water Supply Engineering Section, Iowa Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, IA 50309-4611; via fax at 515/725-0348; or via e-mail at diane.moles@dnr.iowa.gov.

Oral or written comments will also be accepted at the public hearings that will be held in Onawa, Iowa City, and Des Moines. At each hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

- Wednesday, December 3, 2008, 9:00 a.m. at the Onawa Community Center – Kelly Hall, 320 Tenth Street, Onawa.
- Friday, December 5, 2008, 10:00 a.m. at the Iowa City Public Library, 123 S. Linn Street, Iowa City. Parking is available in the ramp at the corner of Linn and Burlington; the library will validate the parking stub for one hour.
- Thursday, December 11, 2008, 10:00 a.m. at the Wallace Building Auditorium, 502 E. 9th Street, Des Moines. Parking is available in the ramp west of the Wallace Building or in the lot east of the Capitol.

Any persons who intend to attend a public hearing and have special requirements, such as hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

This amendment is intended to implement Iowa Code section 455B.105 and 455B.260 through 455B.274.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code §17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rulemaking.

The following amendments are proposed.

Item 1. Adopt the following new 567-subrule 50.4(2):

50.4(2) *Fees.*

a. Application Fee. An application to the department for a new permit, modification of an existing permit, or registration of a minor non-recurring use of water must be accompanied with the fee listed in the table below. These fees are nonrefundable and are not transferable. For any single application, if more than one fee in the table below applies, only the higher fee is required. The fees become effective on July 1, 2009.

Application Description	Form	Fees, in \$
(1) To apply for a new permit to withdraw or divert water	16 (542-3106)	350
(2) To renew an existing permit	542-1470	0
(3) To modify an existing permit to either add a new source or increase the amount or rate of water withdrawn or diverted from a source or sources	16 (542-3106)	350
(4) To modify the conditions of an existing permit which are not described in the previous subparagraph (50.4(2) "a"(3))	16 (542-3106)	0
(5) To apply for an aquifer storage and recovery permit or a protected source designation		700
(6) To apply for a permit to store water	18 (542-3109)	75
(7) To register a minor nonrecurring use of water	20 (542-3112)	75

b. Annual Permit Fee. In addition to the application fee, there is an annual permit fee for a water use permit or an aquifer storage and recovery permit. The annual fee shall be based on

the number of active permits. Each permit holder shall pay the same annual fee. The fee will not be prorated and is nonrefundable. The annual permit fee is due December 1st of each year, beginning with December 1, 2009. The department will provide an annual fee notice to each permittee at least 60 days prior to the fee due date. An additional fee of \$100 will be imposed if the fee is not received by December 1st. Failure to remit the fee by January 1st may result in the cancellation of the permit.

There is no annual fee for a water storage permit (50.4(2)"a"(6)) or for a minor nonrecurring water use registration (50.4(2)"a"(7)).

The annual fee shall be based on the costs for administering the water use permitting program for the previous calendar year and on the budget for the next fiscal year. The department will review the annual permit fee on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the water use permitting program. Permit holders that have paid an application fee after December 1st, but prior to November 30th, will not be required to pay an annual fee until December 1st of the following year. If an applicant remits an annual fee for the twelve-month period beginning December 1st, but then later submits an application fee for a permit modification, the applicant will be refunded the lesser of the fees. The department shall request commission approval of the amount of the annual fee no later than September each year.

Item 2. Rescind and reserve 567-subrule 55.5(2).

Date

Richard Leopold, Director